

Transcript of Merck Lead Plaintiff hearing and decision

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1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEW JERSEY
3 CIVIL ACTION NO. 05-1157

4 IN RE: MERCK LITIGATION MOTIONS FOR LEAD
5 PLAINTIFF AND LEAD
6 PLAINTIFFS' COUNSEL

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8 April 18, 2005
9 402 E. State Street
10 Trenton, New Jersey

11 B E F O R E: HONORABLE STANLEY R. CHESLER, USDJ

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14 Pursuant to Section 753 Title 28 United States Code, the
15 following transcript is certified to be an accurate record
16 as taken stenographically in the above-entitled proceedings.

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18 Official Court Reporter

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1 THE COURT: It's still just barely good morning,
2 so, good morning, everybody. Enter your appearances,
3 counsel.

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1 firm in this case or any another firm is because of what
2 happened in the Halliburton case, pure and simple. But we
3 can move forward today. But instead, Mr. IZARD is putting a
4 road block and he is saying no. Why? Why can't we move
5 forward? That's my argument. And that man, he worked for
6 Merck. He's the one who has a say here, not me, not them,
7 not them. That's who we're here for. Thank you, your
8 Honor.

9 THE COURT: Thank you. Is there anything further?

10 MR. IZARD: Only if you have any questions, your
11 Honor.

12 THE COURT: No, I don't. I'm satisfied based upon
13 what I've heard that the Cimato plaintiffs' proposal is
14 indeed one which the Court, in fact, should and must adopt.
15 I've read your papers with interest. While I read it with
16 interest, quite frankly, I also read it with distress.

17 Frankly, I look forward to the day when something
18 vaguely resembling the PSLRA and its selection process can
19 be enacted to govern lawsuits like this.

20 This Court regards the type of skirmishing, sniping
21 that are disclosed in these papers to be distasteful. The
22 Cimato plaintiffs have presented a proposal which makes a
23 good deal of sense to the Court. From the Court's point of
24 view, there can only be one objective in selecting lead
25 plaintiffs and lead counsel and, that is, to come up with a

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1 selection which, in fact, makes certain that a group which
2 can effectively, intelligently and vigorously represent the
3 interests of the potential ERISA class members is put
4 together.

5 This Court could not care less about who's fighting
6 to get what piece of what pie in terms of attorneys. Quite
7 frankly, the Court does not regard class action litigation
8 as being another variant of the attorneys' full employment
9 act of 2005.

10 Quite frankly, it doesn't matter if some law firms
11 get a bigger piece of the business and some law firms do
12 not.

13 In short, the issue is which law firms can make
14 this lawsuit move most effectively and intelligently for a
15 plaintiff class.

16 The Court read, for example, the papers from
17 counsel for plaintiff Horne suggesting that in some manner
18 or other the law firms in the ERISA class action litigation
19 have created a closed club and that they are valiantly
20 trying to break into that club. I applaud them for their
21 efforts. That's good business development, but from the
22 Court's point of view, what is intelligent selection of
23 attorneys is picking a group of attorneys who, in fact, have
24 substantial experience and heft in this area, and there is
25 no doubt from looking through the applications of this Court

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1 that the Cimato plaintiffs' structure indeed has that.

2 While Schatz & Nobel may not have that many

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3 attorneys, there are more than an adequate number of
4 attorneys in the firms which have agreed to sign on to that
5 proposal. What is clear is that Schatz & Nobel does have
6 substantial experience in this area and much more experience
7 than other contenders.

8 The Court is satisfied that that, coupled with the
9 experience of the other counsel who have joined that group,
10 make it far and away the most appropriate proposal that's
11 been submitted to this Court.

12 The Court is prepared to adopt that proposal,
13 including the appointment to leadership positions in that
14 proposal of Scott & Scott and the Johnson & Perkinson firms.
15 Of course, if either firm does not wish such an appointment,
16 they can tell me now and I'll be glad to accommodate them.

17 MR. ROTHSTEIN: What's the position, your Honor?

18 THE COURT: The position, as I understand it in
19 their proposal, is participation in the discovery committee.
20 Is that correct?

21 MR. IZARD: Yes, your Honor.

22 MR. ROTHSTEIN: We'll accept it.

23 MR. PERKINSON: Your Honor, we're happy to accept
24 to work with lead counsel. Thank you.

25 THE COURT: Fine. As I said, the proposal

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1 submitted by the Cimato group will be adopted by the Court.
2 The Cimato group lead plaintiff structure will also be
3 adopted by the Court and the Court will enter an appropriate